

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji – Goa

CORAM: Shri Juino De Souza: State Information Commissioner

Appeal No: 96/2018/SIC-II

Mrs. Sebastiao Fernandes,
H.No. 19, Adsulem,
Benaulim, Salcete-Goa. 403 716.

.... Appellant

v/s

1.Public Information Officer
Village Panchayat Cana Benaulim,
Benaulim, Salcete –Goa. 403 716.

2.First Appellate Authority,
The Block Development Officer-I
Salcete Taluka,
New Collector Building,
Margao Salcete - Goa.

.... Respondents

Relevant emerging dates:

Date of Hearing : 16-12-2019

Date of Decision : 09-01-2020

ORDER

1. **Brief facts** of the case are that the Appellant vide an RTI application dated 11/01/2018, sought certain information from the PIO, Secretary, V.P. Cana Benaulim, Salcete –Goa u/s 6(1) of the RTI Act 2005
2. The information is at four points and the Appellant is *inter alia* is seeking information on the Sub division plan and license issued by the Panchayat and Town & Country Planning Department to sub divide property surveyed under No.1/1, 9/1,5/15,7/1,and 7/3 of Adsulem Village, and to provide Panchayat approval No.1296 dated 17/03/1987, NOC No.TPM/Sub-Div/Adsulem/1/1/95/1455 dated 23/06/1995 from Town & Country Planning Department, Development permission NO.SGPDA/M/P/1079/91-92 dated 3/1/92 from South Goa Planning & Development Authority, Margao, Conversion Sanad LRC/CONV/24/87/ dated 30/07/87 and also to provide the certified copy of the Gift deed done by M/s Sapana Real Estate in favour of Panchayat of Cana Benaulim along with Plan's including the Gift deed registered....

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.....under No.2730 paged at 99 to 113 book and Certified copies of Financial approval/s from concerned Department/s that may be required to carry out all such works on/at Dando Ground/San Joao Baptist ground Benaulim/Adsulem, and also to give certified copies of the estimate/s tender/s work order given to execute such works at/on Dando Ground "San Joao Baptist Ground at Benaulim & Adsulem Village and other such related information, as contained in the RTI application therein.

3. It is seen that the PIO vide reply No. VPCB/3677/2013-14 dated 10/03/2014 furnished the information on all four points. In point No.1 it was stated as 'YES' and the possession certificate vide No.DSYA/PS/GVSPG/Cana- Benaulim /12/3589 dated 19/10/2012 was enclosed. In point No.2 it was stated that Survey No.387/1 part, Plot A (North) A (South). In Point No. 3, it was stated that the information is not available and at point No.4 it was informed that total area of the Football ground is 11430 Sq mts.
4. Not satisfied with the reply of the PIO, the Appellant thereafter filed a First Appeal before the FAA on 18/02/2018 and the FAA vide an order dated 21/03/2018 on the Roznama disposed off the First Appeal by observin thus " the information pertaining to point No. 1 a b, c, & d is not found on the record and since the information pertains to year 1981, 1995 & 1992 the information if found will be furnished. Information pertaining to point No.3a, 3b & 3c is partly given and since information pertains to 20 years prior of filling the Appeal. The respondent arguments are satisfactory. Further information pertaining to 4a,4b, & 4c is partly given and some information is not found in the records and the matter stands disposed'.
5. Being aggrieved with the Order of FAA and the fact that the PIO has not furnished information, the Appellant subsequently has approached the Commission by way of Second Appeal registered before.....

..... the Commission on 20/04/2018 and has prayed that necessary direction be issued to the Respondent No. I & II to give definite answers to the RTI questions as to whether the information is in the possession of the Panchayat or not & if lost, the details of the missing report that needs to be filed and that all records have to be computed indexed, catalogued are required under the RTI Act and for other such reliefs.

6. **HEARING:** This matter has come up for hearing before the Commission on numerous previous occasions and hence taken up for final disposal. During the hearing the Appellant Mr. Sebastiao Fernandes is present alongwith his authorized representative Calvert Gonsalves. The Respondent PIO & FAA are both absent.
7. **SUBMISSION:** At the outset Shri Calvert Gonsalves for the Appellant submits that the excuse given by the PIO that the information is not traceable or not available is not acceptable` and the fact that the PIO has stated that the information is not traceable, it means it is available with the public authority but the PIO has failed to trace the information.
8. Shri Calvert Gonsalves further submitted that it is not the case that the records have been destroyed and the PIO is giving an evasive answer and that section 4(1)(a) and 4(1)(b) of the RTI Act is not being complied and it is mandatory that all records should duly catalogued and indexed. It is also stated that the PIO cannot take an excuse that the information which is 20 years old cannot be given and that the information sought does not fall under the exemptions under section 8(1)(a), (c) and (i).
9. **FINDINGS:** The Commission has heard Shri. Calvert Gonsalves the representative for the Appellant and perused the material on record including the reply filed by the PIO dated 26/10/2018 and written argument of the Appellant dated 08/06/2018 & 26/10/2018. ...4

10. The Commission finds that pursuant to the receipt of the RTI application dated 11/01/2018, the PIO has furnished information as available vide his reply dated 10/03/2014, however at some points he has mentioned that the information is not available in the Panchayat Records. The Commission also finds that the Appellant had filed a First Appeal and the First Appellate Authority had observed that some information is not found in the records.
11. The point for determination is whether the Commission can direct the PIO to furnish information which is not available in the records or is not traceable. In this context, the Appellant has argued that that the word 'not available' or 'not traceable' in the office records is an evasive answer. The Appellant has cited an example that for Mr. 'A' the PIO can decide to declare that certain information is not traceable whereas alternatively for Mr. 'B' he can choose to decide that the same records "have been traced and traceable" and available in the office records and such not acceptable.
12. On the other hand the PIO in hi written arguments has argued that he can provide information which is available with the Panchayat or not. The PIO cannot answer question and that prayer of the Appellant in asking the PIO 'whether' the information is in possession of the Panchayat or not is beyond and outside the scope and ambit of the RTI Act. Also the PIO has argued that information records which are to be indexed and computed as per section 4, lies with public authority and not with the PIO.
13. **CONCLUSION:** The Commission accordingly comes to the conclusion that as the information is not traceable, the same cannot be furnished. As stipulated in the RTI Act, the role of the PIO is to provide information as is available, how is available, what is available and if available in the records. The PIO is not called upon to create some information or do calculation or research or to analyze information so as to satisfy the whims and fancies of the Appellant. ...5

14. The Commission is also of the considered opinion that the PIO cannot be compelled to answer question 'whether' information is in possession of the Panchayat or not or it is lost and which does not fall under the purview of the definition of the term 'Information' as per section 2(f) of the RTI act 2005. The very fact that the PIO has furnished a reply dated 10/03/2014 is sufficient to prove the bonafide that there is no malafide intention on part of the PIO to either conceal or deny the information and which is mandated of the RTI Act.
15. Shri. Calvert Gonsalves has also argued that if the information is not traceable then the PIO should file an FIR / Missing Complaint. In this context the Commission finds that the PIO has not stated in his reply that the information is missing but has stated that the information is not available/not traceable and hence there is no necessity for the PIO to file a missing complaint with the police for information which is not traceable or not available. The police cannot be called upon to trace the missing information in the office of the PIO.
16. As information as was available, has been furnished, **no intervention is required with the order of the First Appellate Authority.** The Commission however directs the PIO to once again to do a diligent search and if certain information which was stated as not available or not traceable has been traced, then the same is to be furnished to the Appellant within 30 days of the date of the receipt of the Order. **With these directions the Appeal case stand disposed.** The Commission directs the public authority to take immediate steps for implementation of section 4(1)(a) & 4(1)(b) and have the records catalogued and indexed in the manner as specified in the Act.

Pronounced before the parties who are present at the conclusion of the hearing. Notify the parties concerned. Authenticated copies of the order be given free of cost.

Sd/-

(Juino De Souza)
State Information Commissioner

